

December 10th, 2010

Federal Trade Commission, Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Subject: Proposed, Revised Green Guides, 16 CFR Part 260, Project No. P954501.

Dear Sir/Madam:

Eastman Chemical Company (“Eastman”) commends the Federal Trade Commission (“Commission”) on their thoughtful revision of the Guides for the Use of Environmental Marketing Claims (16 C.F.R. Part 260; “Green Guides” or “Guides”) and appreciates the opportunity to further participate in their revision. Since the Commission initially proposed revising the Green Guides in 2007,¹ marketing claims intended to promote the positive environmental attributes of products have expanded to a wide variety of products and services. Eastman believes there continues to be a strong need for the Commission’s Green Guides because the Guides provide marketers with objective standards to communicate the positive environmental attributes of their products to consumers.

To assist the Commission, Eastman organized its comments to generally correspond to the format used by the Commission in the October 15th, 2010 Federal Register notice (“Notice”) including comments on general issues and the proposed revision of the Green Guides.² Included as an Appendix to these comments, Eastman provides its responses to the specific questions posed by the Commission in the Notice.³

I. General Issues

Industry Compliance. While the Guides focus on the marketing of products and services directly to the consumer, Eastman agrees with the recommendations that the Commission should also emphasize their importance in business-to-business marketing.⁴ Manufacturers of consumer products typically rely on marketing materials and other information from their suppliers to support their environmental marketing claims. Thus, to ensure the integrity of the claims made to the consumer, it is important that the Commission emphasize that the Guides apply to similar claims made within the supply chain. Clearly the revision of the language in Section 260.1 (“Purpose, Scope, and Structure of the Guides”) and the inclusion of two business-to-business examples in the Guides demonstrate the Commission’s commitment to communicating the broad scope of the Guides. While we do find

¹ 72 FR 66091 (November 27, 2007).

² 75 FR 63552 (October 15, 2010).

³ *Id.* at 63597

⁴ *Id.* at 63556.

the Commission's proposed changes helpful, Eastman believes the Commission could make this message stronger. For example, the proposed language in Section 260.1 states that the Guides apply to "individuals, businesses, or other entities." Eastman recommends that the Commission add the following or similar additional sentence: This includes, but is not limited to, claims made between business about the products or services supplied (i.e., business-to-business claims). Although additional business-to-business examples would be welcomed, such changes may not be feasible without further delaying the timely publication of the Guides. Eastman believes this simple change would erase any doubt as to the applicability of the Guides to the business-to-business marketing and support the Commission's planned outreach efforts.

II. Comments to Specific Section of the Proposed Revised Green Guides

While Eastman welcomes many of the changes proposed by the Commission, we provide additional comments for specific Guides below.

260.4 General Environmental Benefit Claims

Eastman is agrees with the Commission's decision to continue to allow general environmental benefit claims under the proposed Guides. For many marketers, general environmental benefit claims such as environmentally-friendly, eco-friendly or green are a convenient shorthand to draw a consumers' attention to a product or service that has one or more a positive attributes. Most importantly, we support the Commission's new requirement that such a general environmental benefit claims must be qualified with clear and prominent language. In essence, if a product or service has a meaningful attribute, the marketer should be permitted to make the general environmental benefit claim but must then tell the consumer the basis of that claim through qualifying language.

In the response to comments and consumer survey results,⁵ the Commission expressed a concern that even if a general environmental benefit claim is appropriately qualified, the claim may still imply that the particular attribute provides the product with a net environmental benefit. The Commission was particularly concerned when the product or service otherwise imposed some negative impact to the environment.⁶ As a result, the Commission requested further comment on consumer interpretation of qualified general claims.

Unlike attribute-specific claims (e.g., ozone friendly, recyclable), general environmental benefit claims do appear to imply a net environmental benefit to a large number of consumers even when adequately qualified. While Eastman supports the Commission's proposal that such claims be qualified, it does encourage the Commission to provide additional guidance discouraging the use of general environmental benefit claims when the product or service has a substantial negative environmental impact unseen to the consumer. Eastman suggests the Commission consider whether making a qualified general environmental claim under these circumstances may be an overstatement prohibited under the Guides' General Principles provisions.⁷ In the example provided in the comments, a marketer who claims their product is "Green – Now contains 70% recycled content" has to import more materials from a distant source which results in an increase in energy use that offsets the benefit of using recycled

⁵ *Id.* at 63563.

⁶ *Id.* at 63564.

⁷ 16 C.F.R. Part 260.3(c). Overstatement of environmental attribute.

content.⁸ Here, the use of “green” is qualified (i.e., supported) by the recycled content claim and can imply a net environmental benefit. If the benefit of using recycled content is offset by the increased energy use, then the use of “green” would be an overstatement because it can imply a net environmental benefit. The Commission’s finding that a general environmental claim may imply a net environmental benefit supports a need for additional guidance and examples on the proper use of such claims when the marketer is aware that the product or service has an offsetting negative impact that the reasonable consumer would find deceptive.

260.6 Certification Seals and Approvals

Under the Commission’s Endorsement Guides, marketers must disclose a “material connection,” or a “connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement.”⁹ This is demonstrated in Example 2 of the Certification Seals and Approvals Guide where a product manufacturer using a seal from an association to which the manufacturer is a dues-paying member must disclose this “material connection” to avoid deception. In Example 6, however, use of the seal is not deceptive because there are no material connections between the certifying organization and the manufacturer that must be disclosed. Although the Commission provides no specific examples, it is common for independent certifying organizations to require the manufacturer seeking certification to pay the costs associated with certification or testing. Eastman asks the Commission to confirm that the reasonable payment of costs to a certifying organization for certification services is not a material connection that needs to be disclosed when using the organizations seal or logo.

260.7 Compostable Claims

The proposed Guide allows a product to claim that it is compostable if it will become part of usable compost in a safe and timely manner in a home compost pile, or through a municipal compost program or facility. Based on the Commission’s examples, primarily Example 1, a product that is compostable in a home compost pile need not be further qualified with respect to municipal programs. If a product is not suitable for a home composting, however, the product should clearly and prominently disclose this limitation.¹⁰

Eastman also requests the Commission to clarify whether a product that is *only* compostable in municipal facilities must carry a claim that it is not suitable for home composting. In order for the electronic manufacturer’s claim in Example 3 to be acceptable, the manufacturer should clearly and prominently disclose that the package is not suitable for home composting.¹¹ In Examples 4 through 6, however, the Guide does not require manufacturers’ with products unsuitable for home composting to make the same type of disclosure. Eastman requests the Commission to clarify when disclosure that a product is not suitable for home composting is appropriate.

For municipal composting, it appears the Guide requires a qualification when composting facilities are not available to a substantial majority of consumers or communities where the item is sold. While this is analogous to the approach taken for recyclability claims, it is unclear if the Commission intends to adopt the same “substantial majority” standard of 60%

⁸ 75 FR 63552 at 63564.

⁹ 16 C.F.R 255.5.

¹⁰ 75 FR 63552 at 63602.

¹¹ *Id.*

for composting claims.¹² Based on the results of the APCO survey,¹³ it is unclear if the availability of municipal composting facilities is sufficient to support an unqualified composting claim in any but the smallest of locales. Specifically, the APCO survey found that 90% of consumers either do not have access to or are unaware of access to appropriate composting facilities. Eastman generally believes the 60% threshold is a reasonable requirement but suspects that the *current* infrastructure for municipal composting is cannot support an unqualified claim. Thus, the Commission and marketers must accept that it will be difficult to make an unqualified composting claim for products only suitable for municipal composting and that most claims will need to be qualified as in Example 4 of the Guide.¹⁴

The Guide advises that compostable claims should be supported by “...reliable scientific evidence that all materials in the item will break down into, or otherwise become part of, usable compost ... *in an appropriate composting program or facility* ...” (emphasis added).¹⁵ Eastman is concerned that testing protocols that represent an appropriate composting program or facility may not be available to satisfy this requirement. Thus, we ask the Commission to comment on whether ASTM standards ASTM D 5388 (Aerobic Biodegradation) and ASTM 6400-04 (Carbon Conversion) are suitable to support a compostable claims in this context. We believe that ASTM tests provide solid scientific benchmarks and appropriate tests from a certified ASTM testing lab should provide adequate support for such claims.

260.8 Degradable Claims

Section (b) of the Degradable Claims Guide requires that “an unqualified degradable claim should have competent and reliable scientific evidence that the entire item will completely break down and return to nature...” As the Commission is aware, ASTM provides a variety of standards to determine degradation in certain environments. For substantiation, does the Commission recommend that a manufacturer use these tests where they apply or can substantiation for degradable claims be based on other competent and reliable testing?

260.9 Free-Of and Non-Toxic Claims

Eastman appreciates the creation of a separate guide to address “free-of” and “non-toxic” claims.¹⁶ In particular, we find that the guidance for no, free-of and does not contain claims provides reasonable and workable solutions to address this important marketing issue.

Eastman recommends the Commission *not* provide guidance on the use of “non-toxic” claims for products and services. Depending on the intended end use of a product, manufacturers are often required by regulation to evaluate the human and environmental toxicity of the substances and products they manufacture. This evaluation typically involves extensive scientific testing and evaluation of the results by subject matter experts within industry and the applicable regulatory agency(ies) (e.g., Food and Drug Administration, Environmental Protection Agency, Consumer Product Safety Commission). Because of the complex scientific nature of the substantiation needed to support a non-toxic, we recommend that the Commission consider removing this guidance from Section 260.9. Manufacturers,

¹² 75 FR 63552 at 63571.

¹³ 75 FR 63552 at 63559.

¹⁴ *Id.* at 63602. In Example 4, the marketer of a lawn and leaf bag must qualify the “compostable” claim by adding “[a]ppropriate facilities may not exist in your area” or providing an approximate percentage of communities where appropriate programs are available.

¹⁵ *Id.* Part 260.7(b).

¹⁶ 75 FR 63552 at 63603 (Part 260.9).

however, would not be precluded from making non-toxic claims for their products subject to the general provisions of the Guides or Federal Trade Commission Act.

260.10 Ozone-Safe and Ozone-Friendly Claims

Eastman supports the changes made by the Commission. However, in newly added Example 3, we suggest that the Commission also advise how the “environmentally friendly” claim by the air conditioner manufacturer can be made acceptable with qualifying language.

260.11 Recyclable Claims

The Commission proposes the continued use of the “substantial majority” threshold to determine appropriate use of the term “recyclable.”¹⁷ In addition, the Commission has now further defined “substantial majority” as “around 60 percent of consumers or communities.” However, there still exists a significant need for the Commission to clarify the meaning of “consumers” and “communities.” For example, a product might be collected and recycled in just a few heavily populated areas, whereby at least 60% of the national population is able to recycle the product; the product, however, may not be collected at 60% of the total collection facilities. Under these circumstances would the Guide permit a recyclable claim? Eastman asks the Commission to provide more clarification of this potential discrepancy in the Guide.

We also ask that the Commission clarify whether the term “recyclable” in the Guides means “collected” or “ultimately converted into another product.” Many communities will collect all types of articles through curbside recycling but must eventually send some of the collected articles to the landfill. While it is much easier to quantify collection sites, this may not accurately address the true meaning of recyclable. Thus, additional clarification regarding the definition of recyclable would be welcomed.

Finally, the Commission continues to support the position that placement of the Society of the Plastics Industry’s (SPI) resin identification code (RIC) *is not* a claim of recyclability when the RIC is placed in an inconspicuous location on the article. Eastman strongly supports this position.

260.12 Recycled Content Claims

Under the *current* Guide for Recycled Content¹⁸ “pre-consumer” waste (i.e., manufacturing scrap) can be claimed as recycle content if the marketer can substantiate that the material “would otherwise have entered the solid waste stream.” Thus, “lumps and chunks” and other potential scrap feedstock may be considered “recycle” if it can be demonstrated that they would have otherwise been sent to a landfill. The current guidelines also state that material must actually reach the consumer in order for it to be claimed as “post-consumer” waste. Material returned from the distribution system (e.g., products that were “past date” or damaged) can be considered “recycled” but are not “post-consumer recycled” waste. The Commission recommends maintaining these distinctions under the proposed Guide and Eastman supports this position.

260.15 Renewable Materials Claims

As a manufacturer of many products derived from forestry and agricultural sources, Eastman is pleased that the Commission has included a Guide for Renewable Material Claims

¹⁷ 75 FR 63552 at 63604 (Part 260.11).

¹⁸ 16 C.F.R. Part 260.7(e).

in the proposed Guides. Our products include cellulose-based plastics, fibers and additives for coatings, and additives for adhesives derived from oleo resins.¹⁹ These raw materials are used in the manufacture of a wide variety of consumer products and can often replace petroleum-based materials. Not surprisingly, the fact that these materials are derived from renewable forestry and agricultural sources is vital to product messaging.

Eastman finds the proposed qualification elements for making renewable material claims to be considerably burdensome. The guidance indicates that a renewable materials claim implies that the product is also recyclable, biodegradable, and contains recycled content. Unless the marketer has substantiation to support these implied claims, an unqualified renewable materials claim is deemed deceptive and prohibited under the Guide. Example 1 in the Guide, however, appears to suggest that alternative qualifying language can be acceptable. Specifically, the flooring marketer in Example 1 makes an unqualified “made with renewable materials” claim. The example advises that unless the marketer has substantiation that the flooring is also made with recycled content, recyclable, and biodegradable, the unqualified claim is deceptive.²⁰ Despite these requirements, by further stating that “[o]ur flooring is made from 100% bamboo, a fast growing plant, which we cultivate at the same rate, or faster, than we use it” the marketer avoids making a deceptive claim. We agree with the Commission that the additional qualifying language should be sufficient to support the renewable claim because the qualifying language identifies the material, the content, and why the material is renewable. However, we must point out that this qualifying language provides no information about recyclability, recycled content or biodegradability and seems to contradict the guidance under section (b).²¹

It is recognized that the basis of these implied claims is Commission’s consumer perception study which asked respondents what the phrase “made with renewable materials” suggested.²² Because the survey found that significant percentage of respondents believed the claim implied the product was recyclable, made with recycled content or biodegradable, the Commission chose to require substantiation of all three claims as a prerequisite for an otherwise unqualified renewable materials claim. We believe that these requirements are overly burdensome, may penalize the use of renewable materials in some cases. We urge the Commission to permit alternative qualifying language, such as identifying the renewable material and percent content, to support a “made with renewable materials” claim.

260.16 Source Reduction Claims

In some cases, source reduction efforts providing an environmental benefit for a product may have unintended negative consequence for some other product aspect. For example, the concentration of laundry detergent for the purpose of reducing the size of the packaging may result in the detergent becoming more irritating to the skin upon contact. Thus, source reduction efforts can sometimes be deceptive if they have an unstated negative impact on product performance, safety or the environment. Eastman asks the Commission to consider adding a statement that a truthful source reduction claim may nevertheless be deceptive if the source reduction creates an unstated negative impact on the product or environment.

¹⁹ Oleo resins are a semi-solid mixture of rosin and essential oils from plant extracts.

²⁰ The need to satisfy these same three requirements is also noted in Example 3 of this Guide.

²¹ 75 FR 63552 at 63607 [Part 260.15(b)]

²² 75 FR 63552 at 63588.

In closing, Eastman believes the Green Guides provide critical guidance in protecting consumers from deceptive and misleading information about products. Eastman hopes that the Commission finds our comments and answers to their questions useful in their subsequent revision of the Guides. Should the Commission have any questions regarding any of the comments provided, please do not hesitate to contact me at 423.229.2904 or by email at lvelsor@eastman.com.

Sincerely,

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APPENDIX

Below Eastman provides response to select questions put forth by the Commission in Section VII Request for Comment of the Notice. Numbers below correspond to the question of the same number in the Notice. Please note the questions are also included in boldface below.

- 1 **Do consumers interpret general environmental claims, when qualified by a particular attribute, to mean that the particular attribute provides the product with a net environmental benefit? Please provide any relevant consumer perception evidence. Should the Commission advise marketers that a qualified-general environmental claim is deceptive if a particular attribute represents an environmental improvement in one area, beneficial than the product otherwise would be? Why or why not?**

Eastman does not have any relevant consumer perception evidence to support or refute that a general environmental claim qualified by a particular attribute is interpreted by consumers to have a net environmental benefit. However, a product with a particular attribute that is substantiated and desired in the marketplace should be sufficient to support a general environmental benefit claim. Alternatively, any of the attribute-specific benefits identified in the Guides (e.g., recyclable, made with renewable materials) should be permitted to support a general environmental benefit claim if the claimed benefit is appropriately substantiated and within the scope of the guidance for that benefit. For example, a manufacturer of plastic flower pots claims that the pots are manufactured from 100% recycled materials and has competent and reliable substantiation to support the claim. Because this claim is within the scope of the guides (i.e., recycled content) and it is an attribute that reasonable consumers would find beneficial, the manufacturer should also be able to claim the flower pots are environmentally friendly.

2. **Would it be helpful to include an example in the Guides illustrating a qualified general environmental claim that is nevertheless deceptive? For example, a marketer advertises its product as “Eco-friendly sheets - made from bamboo.” Consumers would likely interpret this claim to mean that the sheets are made from a natural fiber, using a process that is similar to that used for other natural fibers. The sheets, however, are actually a man-made fiber, rayon. Although bamboo can be used to make rayon, rayon is manufactured through a process that uses toxic chemicals and releases hazardous air pollutants. In this instance, the advertisement is deceptive.**

Yes, the Guide should provide additional examples of deceptive and non-deceptive general environmental benefit claims. Examples should contrast what is deemed to be deceptive against what the Commission would consider an appropriate claim. In the example above, the Commission should also include information as to how the claim can be modified to avoid deception. For example, because the rayon product is actually manufactured from bamboo, could the product carry a claim it is sourced from renewable sources? Would an “eco-friendly” or “more eco-friendly than synthetic rayon products” be an acceptable alternative?

4. **If a marketer makes an unqualified degradable claim for a liquid substance (or dissolvable solid), how long do consumers believe the substance will take to completely degrade? Please provide any relevant consumer perception evidence. Should the Commission provide guidance concerning this time period in the Guides? Why or why not?**

Eastman believes that the Guides should provide a means for making a degradable claim for all products whether they are in solid or liquid form. In addition, the Guides should provide more complete guidance as to what constitutes degradation. Solids that breakdown into less discernable particles is not truly

degradation. While the general guidance for degradable claims could be effectively applied to solids or liquids, the Commission would need to provide appropriate examples for liquids because the manner of disposal is different than solids. For example, a claim that a plastic trash bag is degradable should be based on substantiation that the bag degrades in the environment in which it is customarily disposed – a landfill. For liquids, disposal may be a landfill or the municipal sewage treatment system. In this case, the acceptable time period may be as short as the residence time in they treatment system. If the product is not degraded within the sewage system and enters the environment, consumers may still expect a short period for degradation.

5. **The Commission proposes adopting a maximum period of one year for complete decomposition of solid materials marketed as degradable without time qualification. Would this guidance lead to deceptive claims in circumstances where consumers would expect a material to degrade in less than one year?**

Unless consumers are aware that a “degradable” claim means the product completely degrades in one year or less, the potential for deceptive claims exists. One solution may be that any product where degradation takes more than one year should be time-qualified.

8. **What changes, if any, should the Commission make to its guidance on pre-consumer recycled content claims? How do consumers interpret such claims? Please provide any relevant consumer perception evidence.**

a. **If the Commission should retain its guidance that pre-consumer recycled materials be diverted from the solid waste stream: (1) should the Commission continue to consider “reuse in the original manufacturing process” and “significant reprocessing” to determine if material is diverted from the solid waste stream; (2) what factors should the Commission consider to determine whether material was diverted from the solid waste stream; and (3) when processes that divert material from the waste stream become standard practice in an industry, do consumers continue to consider that material recycled content?**

Whether “scrap” is re-used in the manufacturing process (i.e., pre-consumer recycled) is largely an economic issue; if the scrap is of sufficient quality to replace virgin material, the manufacturer will generally reintroduce it into the manufacturing process. In some cases, however, a manufacturer might have greater incentive to claim that the scrap would have gone to the landfill simply in order to support a recycled content claim. Unfortunately, the consumer probably has no idea whether scrap is or is not used in generating virgin products.

b. **If materials have historically been diverted from the solid waste stream and reused for one purpose (e.g., fiber fill in toys), but now may be reused for other higher purposes (e.g., as raw fiber for textiles), do consumers still consider that material to be recycled content even though the material was already being diverted from the solid waste stream?**

As noted above, it is unlikely the consumer knows where pre-consumer scrap is being used today. This raises the question of recycling versus down-cycling. Most “recycling” today is down-cycling regardless of the source of the material. Thus, distinguishing between pre- and post-consumer waste is generally not critical. Consumers are more confused by use of the term “recycled” to represent down-cycling when they believe the material will be used in perpetuity. This is a significant issue that the Commission should consider addressing.

9. **Do consumers understand the difference between pre-consumer and post-consumer recycled content? Please provide any relevant consumer perception evidence.**

Eastman has no consumer perception evidence on this issue. However, Eastman believes that consumers do not realize that pre-consumer scrap even exists and, thus, would not necessarily consider it “recycle content.”

10. **Should the Commission continue to advise marketers that recycled content claims may be based on the annual weighted average of recycled content in an item?**

Consumers purchase products containing “recycled content” because doing so helps divert material from the landfill. They are not concerned about daily or weekly variations in the content. Thus, an annual weighted average diversion should be acceptable.

If so, why? If not, why not? Are recycled content claims based on this method likely to mislead consumers? Would qualifying the claim avoid that deception?

Qualification would help ensure transparency and avoid consumer misunderstanding. It will be important to substantiate an annual weighted average through verification by a reputable third party. In some cases, process and audit systems that track and report annual weighted average of recycle content are already in place.

11. **If a product is advertised as “made with recycled materials,” either in whole or in part, should the Commission advise marketers to qualify that claim to indicate that the product is not recyclable if it is not? Why or why not? If a disclosure is needed, please describe what the disclosure should be, and why.**

While the concepts of “made with recycled materials” and recyclability are distinct, it is likely that if a consumer sees a claim that the product is “made with recycled materials, her or she is likely to assume that the product, at the end of its life, can also be recycled. However, if the product is not one that is currently recycled, then a statement to that effect should be made.

13. **What guidance, if any, should the Commission provide concerning free-of claims based on substances which have never been associated with a product category? How do consumers understand such claims? Please provide any relevant consumer perception evidence.**

The guidance the Commission provides in the proposed Guides is appropriate for free-of claims. Products that can be grouped into a product category (e.g., water bottles, interior paint) may be manufactured with different materials and/or processes. When some products in a product category contain a substance that is of concern to the consumer, manufacturers whose products are not manufactured with or do not contain the substance should be permitted to communicate this to the consumer under the Guides. If a substance has never been associated with a product category, a free-of claim should be considered deceptive.

15. **How should marketers qualify “made with renewable materials” claims, if at all, to avoid deception?**

Eastman believes that as long as the marketers disclose the renewable material source and content, the claim should not be considered deceptive.

Does disclosing the type of material, how the material was sourced, and the reason the material is renewable adequately qualify the claim? Why or why not?

Eastman believes these types of qualifiers are acceptable and may be necessary in some cases. If the fact that the material is from a renewable resource would be apparent to the reasonable consumer, qualifiers beyond the type of material and content should not be necessary.